

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SITO MOBILE R&D IP, LLC, and
SITO MOBILE, LTD.,

Plaintiffs,

v.

SFA HOLDINGS INC. f/k/a/ SAKS
INCORPORATED,

Defendant.

Case No. 1:23-cv-00688-RP

**DECLARATION OF JEFFREY I. KAPLAN IN SUPPORT OF
DEFENDANT’S MOTION TO STAY**

I, Jeffrey I. Kaplan, declare as follows:

1. I am a lawyer admitted to practice before the courts of the State of New Jersey and am a partner at Kaplan Breyer Schwarz, LLP, counsel for third-party Bambuser AB (“Bambuser”).

2. I submit this declaration in support of Defendant SFA Holdings Inc. f/k/a Saks Incorporated’s (“Saks”) Motion to Stay.

3. If called upon as a witness, I could and would competently testify as follows.

4. Bambuser created, licensed, white-labeled, and supplied Saks with video streaming technology. Saks is a customer of Bambuser.

5. On August 22, 2023, after receiving notice of the above-captioned lawsuit, Saks requested Bambuser defend and indemnify Saks pursuant to the terms of the agreement governing Saks and Bambuser’s relationship.

6. On or around September 8, 2023, based upon the information in the Complaint and the information provided by Saks, Bambuser agreed to defend Saks in relation to the above-captioned suit and indemnify Saks for any infringement by Bambuser's video-streaming product.

7. In addition to the above-captioned case, plaintiffs SITO Mobile R&D IP, LLC and SITO Mobile, Ltd. (collectively, "SITO"), on or about October 6, 2023, sent a 76-page unfiled patent infringement complaint to another customer of Bambuser (the "Second Customer").

8. That unfiled complaint was accompanied by a letter—which did not identify Bambuser as an addressee—threatening that SITO plans to file that complaint in a lawsuit against the Second Customer. That letter and complaint each alleged infringement of the same six patents asserted in the Complaint, implicating the same Bambuser technology supplied to Saks and also at issue in the above-captioned action.

9. SITO threatened to file the additional lawsuit against the Second Customer, and captioned the Complaint for filing in the United States District Court for the Southern District of New York.

10. The accused technology cited in SITO's draft complaint sent to the Second Customer is supplied to the Second Customer by Bambuser, and the Second Customer has also sought defense and indemnity from Bambuser.

11. On November 1, 2023, Bambuser filed a declaratory judgment action in the United States District Court for the District of New Jersey concerning the validity and infringement of the same six patents asserted in the above-captioned lawsuit (the "Declaratory Suit"). The Declaratory Suit is captioned: *Bambuser AB v. SITO Mobile R&D IP, LLC and SITO Mobile, Ltd.*, C.A. No. 2:23-cv-21757. A true and correct copy of the complaint filed by Bambuser in the Declaratory Suit is attached hereto as Exhibit A.

12. On or around November 13, 2023, acting in defense of Saks, Bambuser approached counsel for SITO to ask if they would consent to the stay of the above-captioned action based on the customer-suit exception. SITO delayed responding to this inquiry for at least

two weeks while Saks and Bambuser patiently waited. Ultimately, SITO's counsel announced that they would not consent. Within three days thereafter, SITO, without warning or prior discussion, filed a motion in the Declaratory Suit, attempting to stay the Declaratory Suit in deference to this action, even though this action does not even name the Second Customer or Bambuser (the plaintiff in the Declaratory Suit) as a party to this case. SITO's motion to stay the Declaratory Suit omitted any mention of the customer-suit exception, which counsel had discussed at length.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct when based upon personal knowledge, and believed to be true and correct when based upon information and belief.

DATED: December 13, 2023

/s/Jeffrey I. Kaplan

Jeffrey I. Kaplan